

**ORIGINAL**

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FILED 09 FEB 18 15 2009 CLERK OF COURT

Attorneys for Defendant  
 New York Life Insurance Company

## UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**CV 09-3015-CL****CV 09-3015-**

LINDA A. HENSON,

Plaintiff,

v.

NEW YORK LIFE INSURANCE  
COMPANY,

Defendant.

Civil No.:  
  
**NOTICE OF REMOVAL TO FEDERAL  
COURT**Josephine County Circuit Court  
Case No. 09-0061-L7

For the purpose of removing this action to the United States District Court for the District of Oregon (Medford Divisional Office), Defendant New York Life Insurance Company ("NYLIC") alleges as follows:

**I. PROCEDURAL POSTURE – STATE COURT ACTION**

1. NYLIC is the Defendant in a civil action commenced in the Circuit Court of the State of Oregon for the County of Josephine, entitled *Linda A. Hines v. New York Life Insurance Company*, Case No. 09-0061-L7.

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NOTICE OF REMOVAL TO FEDERAL COURT

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2. Service of the Complaint was made on NYLIC on or about January 20, 2009.

3. The following constitutes all of the process, pleadings, and orders served upon Defendant in the action: A Complaint for breach of contract and Summons, copies of which are set forth as Exhibits "A" and "B" attached hereto and incorporated herein as part of this Notice of Removal.

## **II. STATEMENT OF APPLICABLE LAW – JURISDICTION**

4. Upon information and belief, Plaintiff is an individual residing in the State of Oregon. (Complaint ¶ 1).

5. NYLIC is organized and existing under the laws of the State of New York, with its principal place of business in the State of New York. NYLIC was not and is not incorporated under the laws of the State of Oregon, where this action has been brought. (Complaint ¶ 2).

6. Plaintiff's Complaint alleges that the Plaintiff is a beneficiary of an insurance contract issued or underwritten by NYLIC. Plaintiff alleges that damages in this case consist of \$121,000 in disability benefits, plus accrued interest at nine percent (9%) per annum upon each unpaid \$1,000 increment from the date it was allegedly due until paid. (Complaint ¶¶ 4-5). Plaintiff further alleges that he is entitled to attorney fees and expressly makes claim for attorney's fees pursuant to ORS 742.061(1). (Complaint ¶ 7). The Complaint thus constitutes notice that the Plaintiff seeks in excess of \$75,000 in damages.

7. This Court has diversity jurisdiction pursuant to 28 USC § 1332 in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Accordingly, and without waiving objections to personal jurisdiction and venue, NYLIC is authorized to remove this action to this Court pursuant to 28 USC § 1441.

8. Venue is proper in the Medford Divisional Office of the U.S. District Court for the District of Oregon, in that this action was filed in the Josephine County Circuit Court.

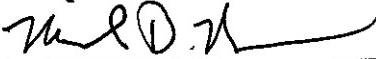
9. The Notice of Removal of Civil Action is filed with this Court within thirty (30) days after service on NYLIC of the Summons and Complaint in the above-entitled action.

WHEREFORE, Defendant New York Life Insurance Company prays that the above-entitled action be removed to this Court from the Circuit Court of the State of Oregon for the County of Josephine.

DATED this 18<sup>th</sup> day of February, 2009.

BULLIVANT HOUSER BAILEY PC

By



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Attorneys for Defendant  
New York Life Insurance Company

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TRIAL COURT ADMINISTRATOR  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JACKSON

LINDA A. HENSON,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,

Defendant.

Case No. 090061 L 7

COMPLAINT FOR BREACH  
OF CONTRACT

Claim not subject to mandatory  
arbitration

Plaintiff alleges that:

1.

Plaintiff is and at all relevant times was a resident of Jackson County, Oregon.

Defendant is now and at all relevant times was a foreign insurance company authorized to do business in the State of Oregon and doing business in Jackson County, Oregon under the name set forth in the caption above.

2.

On or about April 10, 1991 plaintiff entered into an agreement with defendant, by and through its employees or agents, wherein defendant agreed to provide disability insurance benefits for plaintiff under certain terms and conditions. As part of the agreement, plaintiff purchased an extended benefit period option termed an Annual Renewal Disability Income (ARDI). Under the terms of the agreement plaintiff agreed to pay monthly premiums in the amount of \$34.90 for this insurance, which amounts included payment for the ARDI. Plaintiff paid to defendant all of the premium payments due under the terms of the agreement.

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11 5.  
12 Plaintiff submitted proof of claim to defendant and on or about September 11, 2006  
13 defendant denied plaintiff's claim for the \$1,000.00 monthly benefit amount for a period  
14 extending beyond five (5) years.

**15 Plaintiff's First Cause of Action (Breach of Contract):**

**24 Plaintiff's Second Alternative Cause of Action (Specific Performance):**

25 8.  
26 Plaintiff realleges paragraphs 1 through 5 and 7 above.

9

2 In the alternative, defendant should be required to perform its obligations under the  
3 terms of its agreement with plaintiff, paying to plaintiff the amount of \$1,000.00 per month for  
4 the period January 2007 through February 2019, when plaintiff turns 65 years of age.

5 WHEREFORE, plaintiff prays for relief as follows:

- 6       1. Judgment against defendant in the approximate amount of \$121,000.00; or  
7       2. Specific performance by defendant under the terms of the agreement; and  
8       3. Payment of plaintiff's costs and attorneys fees incurred herein; and  
9       4. Any other relief the court deems equitable.

10 DATED January 5, 2009.

DAVIS, ADAMS, FREUDENBERG, DAY & GALLI

By:

Gregory T. Day, OSB #95247  
Of Attorneys for Plaintiff

Davis, Adams, Freidenberg, Day & Galli, Attorneys at Law  
5600 N W Fifth Street, Grants Pass, OR 97526-2024  
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## IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF JOSEPHINE

LINDA A. HENSON,

Case No. 09-0061-L7

Plaintiff,

SUMMONS

vs.

NEW YORK LIFE INSURANCE COMPANY,

Defendant.

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*[Signature]*

TO: NEW YORK LIFE INSURANCE COMPANY, Defendant:

You are hereby required to appear and defend the petition filed against you in the above entitled cause within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE RESPONDENT:**  
**READ THESE PAPERS CAREFULLY!**

*You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the petitioner's attorney or, if the petitioner does not have an attorney, proof of service upon the petitioner.*

*If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.*

/s/ JOHN E. [JACK] DAVISSIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

JOHN E. [JACK] DAVIS, OSB # 75091  
for GREGORY T. DAY OSB #952474  
ATTORNEY/AUTHOR'S NAME (TYPED OR PRINTED)

600 NW Fifth StreetADDRESS

<u>Grants Pass</u>	<u>OR</u>	<u>97526</u>	<u>541-476-6627</u>
<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Phone</u>

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STATE OF OREGON                            )  
 County of Josephine                        ) ss.:

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled cause.

*[Signature]*  
for GREGORY T. DAY, ATTORNEY OF RECORD FOR PLAINTIFF

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TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the petition mentioned therein, upon the respondent, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

/s/ JOHN E. [JACK] DAVIS  
for GREGORY T. DAY, ATTORNEY OF RECORD FOR PLAINTIFF

EXHIBIT B  
 PAGE 1 OF 1

**CERTIFICATE OF SERVICE**

I, Michael B. Hallinan, certify that on February 18, 2009, I served the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** on the parties of record herein, by **mailing** to said parties a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said parties' last known addresses as shown below, and deposited in the post office at Portland, Oregon.

John E. [Jack] Davis  
Gregory T. Day  
Davis, Adams, Freudenberg, Day & Galli  
600 NW Fifth Street  
Grants Pass, OR 97526-2024  
Of Attorneys for Plaintiff

BULLIVANT HOUSER BAILEY PC

By

  
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Attorneys for Defendant  
New York Life Insurance Company

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